IN THE DISTRICT STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) JAMES ADAMS, on behalf of himself and other Oklahoma citizens similarly situated, Plaintiff, vs. (1) EAGLE ROAD OIL LLC, (2) CUMMINGS OIL COMPANY, and (3) JOHN DOES 1 through 25, Defendants.	No. 4:16-cv-00757-CVE-TLW Removed from Pawnee County, Oklahoma, No. CJ-2016-78

NOTICE OF REMOVAL

Defendant Cummings Oil Company ("Cummings Oil") removes to this Court the lawsuit captioned *James Adams, on behalf of himself and other Oklahoma citizens similarly situated, Plaintiff, v. Eagle Road Oil LLC, Cummings Oil Company, and John Does 1 through 25*, Case No. CJ-2016-78, filed in the Oklahoma District Court for Pawnee County, State of Oklahoma, pursuant to 28 U.S.C. § 1441, based upon federal question jurisdiction under 28 U.S.C. § 1331, and supplemental jurisdiction under 28 U.S.C. § 1367(a). In support of this Notice of Removal, Cummings Oil shows this Court as follows:

1. Plaintiff filed this civil action in Pawnee County on November 17, 2016, for damages caused by "Defendants' pollution of the environment within and around Pawnee, Oklahoma through the disposal of fracking wastewater with injection wells." [Class Action Petition (hereafter "Complaint") at ¶ 2, Ex. 1.]

2. This action is an attempt to craft a sub-class of the prior purported class action styled *Lisa Griggs and April Marler, on behalf of themselves and all others similarly situated, Plaintiffs v. Chesapeake Operating, LLC, New Dominion, LLC, Devon Energy Production Co., LP and Sandridge Exploration and Production, LLC, Defendants*, Case No. CJ-2016-6, filed in the Oklahoma District Court of Logan County and removed to the United States District Court for the Western District of Oklahoma and assigned Case No. CIV-16-138-F. The Honorable Judge Friot denied the plaintiffs' motion to remand in *Griggs* and less than two weeks later the plaintiffs filed a Notice of Voluntary Dismissal and dismissed their claims without prejudice. The lawyers that represented the plaintiffs in *Griggs* are, for the most part, the same lawyers representing Plaintiff in this case.[1]

3. Plaintiff served a summons and a copy of the Complaint on Cummings Oil on November 21, 2016. [*See* Complaint Ex. 1; Summons, Ex. 2.]

4. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b)(1) as Cummings Oil filed it within 30 days after Cummings Oil received through service of process a copy of the Complaint.

5. Pursuant to LCvR81.2, copies of all documents filed or served in the state court action and a copy of the docket sheet for the state court action are attached. [Complaint, Ex. 1; Summons, Ex. 2; Docket Sheet, Case No. CJ-2016-78 (Pawnee County), Ex. 3. Additional pleadings are attached as Exhibits 4, 5, and 6.]

6. Pursuant to LCvR81.2, Cummings Oil files herewith a Status Report on Removed Action on the form provided by the Clerk.

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[1] The only lawyer who has entered an appearance in this case on behalf of Plaintiff here, who had not entered an appearance on behalf of the plaintiffs in the *Griggs* action, is Plaintiff's local, and only Oklahoma, counsel.

7. Removal jurisdiction exists pursuant to 28 U.S.C. § 1441(a) on the ground that this is a civil action over which this Court has original jurisdiction as Plaintiff's Complaint presents a federal question arising under the Constitution, laws, or treaties of the United States within the meaning of 28 U.S.C. § 1331; *see also Letbetter v. Local 514, Transp. Workers Union of Am.*, No. 14-CV-125-TCK-FHM, 2014 WL 4403521, at *2 (N.D. Okla. Sept. 5, 2014).

8. Plaintiff's Complaint seeks damages, punitive damages, prejudgment and post-judgment interest, and "all other relief to which Plaintiff and the Class are entitled or that the Court deems just and proper" under theories of absolute liability, negligence, private nuisance, and trespass. The basis for the claims is the allegation that the Defendants have disposed of fracking wastewater produced during oil and gas operations in such a manner as to cause earthquakes in Pawnee, Creek, and Noble counties, Oklahoma. [Complaint, ¶¶ 1, 30, 33, 44, Prayer for Relief].

9. Plaintiff, James Adams, brings the action on behalf of himself and other Oklahoma citizens similarly situated. Plaintiff alleges that his claims are "common to the members of the Class" and are "typical of the claims of the other members of the Class." Plaintiff further alleges that he will "fairly and adequately protect the interests of the Class sought to be certified." [Complaint, ¶¶ 35, 36, 43, 44, 46].

10. The substantial federal question raised on the face of Plaintiff's Complaint involves as follows:

a. Plaintiff purports to represent a class of individuals defined as (i) "Citizens of Oklahoma;" (ii) "owning a home or business in Pawnee County, Creek County, or Noble County ('the Class Area')"; (iii) "during the dates of seismic activity within the Class Area between September 3, 2016, to present;" (iv) and excluded from the class are all "properties on exclusive federal and/or tribal land;" and (v) "Defendants and their officers and directors, and the judge presiding over this action and his/her immediate family members." [Complaint at ¶ 36];

b. There exist lands within the Class Area to which fee title is held by an Indian owner in his/her own name subject to restrictions against alienation. Titles to these properties are not held by the United States in trust for the Indian owner, and they do not belong to the Indian tribe, and therefore these properties are not on "exclusive federal and/or tribal land."

c. These restricted fee lands cannot be sold, mortgaged, or leased without the approval of the United States Bureau of Indian Affairs ("BIA") and are subject to the same federal statutes and regulations which pertain to lands held in trust by the U.S. for individual Indians or tribes.

d. One such federal statute, § 3713 of the American Indian Agricultural Resource Management Act ("AIARMA"), 25 U.S.C. § 3713, establishes civil penalties for trespass on Indian agricultural lands, and these penalties include "the costs associated with damage to the Indian agricultural lands caused by the act of trespass," plus the collection of the costs associated with, *inter alia*, damage appraisal, witness expenses, court costs, and attorneys' fees.

e. "Indian agricultural lands" are defined as Indian lands that are used for the production of agricultural products, excluding Indian forest land. 25 U.S.C. 3703(1); 25 C.F.R. § 166.812.

f. 28 U.S.C. § 1355 provides that federal courts have "original jurisdiction, exclusive of the courts of the States" over any action for the recovery of any penalty, fine, or forfeiture imposed by federal law. This jurisdiction is not exclusive to Tribal courts. *See U.S. v. Plainbull*, 957 F.2d 724, 726-27 (9th Cir. 1992).

g. Because the proposed class encompasses restricted status lands (that are not "exclusive federal and/or tribal land") and because the Complaint asserts a trespass claim and seeks "all other relief to which Plaintiff and the Class are entitled or that the Court deems just and proper" [Complaint at sub-¶ iv of the Prayer for Relief], the Complaint is seeking trespass penalties under 25 U.S.C. § 3713 with respect to class members who are restricted status Indians owning agricultural lands.

h. Based on information and belief, such members of the putative class exist within the three county Class Area.[2]

i. Additionally, the National Indian Forest Management Act ("IFMA") provides similar penalties with respect to trespass on "Indian forest land." *See* 25 U.S.C. § 3106; 25 C.F.R. § 163.29(a)(3).

j. Indian forest land is defined as "Indian lands, including commercial and non-commercial timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless whether a formal inspection and land classification action has been taken." 38 U.S.C. § 3103(3).

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[2] Pursuant to *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547 (2014), Cummings Oil has not attached substantive evidence in support of this Notice. Cummings Oil reserves the right to present such evidence should Plaintiff move to remand this case to state court or as otherwise directed by this Court.

k. Based on information and belief, the proposed class also includes restricted status Indians who own forest lands and, thus, their trespass claims include claims for penalties under the IFMA which are subject to exclusive federal jurisdiction under 28 U.S.C. 1335.

l. This Court also has supplemental jurisdiction over the remainder of Plaintiff's claims on behalf of the individual Indian land owners with restricted fee title, as well as all other putative members of the proposed class pursuant to 28 U.S.C. § 1367(a).[3]

11. Venue is proper for this removal pursuant to 28 U.S.C. § 1391(b)(2) and § 1335.

12. The United States District Court for the Northern District of Oklahoma is the appropriate Court for filing a notice of removal from the Oklahoma District Court in Pawnee County, State of Oklahoma, because this Court is in the district embracing the place where Plaintiff's action was originally filed. 28 U.S.C. § 116(a).

13. Pursuant to 28 U.S.C. § 1446(2)(A), Cummings Oil advises this Court that Defendant Eagle Road Oil LLC consents to this removal and will timely file a notice of consent.

14. Furthermore, consent of nominal or unknown defendants, like John Doe defendants, is not necessary. *Barham v. Toney*, No. CIV–14–388–JHP, 2015 WL 4897960, at *3 (E.D. Okla. Aug. 17, 2015) (nominal party was not required to join removal under 28 U.S.C. § 1446(b)(2)(A)); *Branch Banking & Trust Co. v. Bixby Investors, L.P.*, No. 11–CV–0358–CVE–

[3] "Once federal question jurisdiction exists, it is within the trial court's discretion to exercise supplemental jurisdiction over those state law claims that derive from a common nucleus of facts." *United Int' Holdings, Inc. v. Wharf (Holdings) Ltd.* , 210 F.3d 1207, 1220 (10th Cir. 2000).

TLW, 2011 WL 4348212, at *2, *5 (N.D. Okla. Sept. 16, 2011) (nominal defendant not required to join in removal of action).

15. Cummings Oil removes this action to this Court without waiving any defense it may have pursuant to Rule 12(b). *Advanced Surgery Ctr. v. Connecticut Gen. Life, Ins. Co.*, No. CIV.A. 12-2715 JLL, 2012 WL 3598815, at *10 (D.N.J. July 31, 2012), report and recommendation adopted, No. CIV.A. 12-2715 JLL, 2012 WL 3598799 (D.N.J. Aug. 21, 2012) ("waiver did not occur when the notice of removal was filed as '[a] party who removes an action from a state to a federal court does not thereby waive any of his or her Federal Rule 12(b) defenses or objections'") (quoting 5C Wright & Miller, Fed. Prac. & Proc., § 1395 (4th ed. 2012)).

16. As required by 28 U.S.C. § 1446(d), Cummings Oil will promptly give written notice to all adverse parties by serving copies on Plaintiff's counsel, and Cummings Oil will file a copy of this Notice of Removal with the Clerk of the Oklahoma District Court in Pawnee County, State of Oklahoma.

WHEREFORE Defendant Cummings Oil respectfully removes this action from the Oklahoma District Court in Pawnee County to this Court pursuant to 28 U.S.C. §§ 1331 and 1441(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

This certifies that on December 21, 2016, I electronically transmitted the above document to Clerk of Court using the CM/ECF system for filing. A Notice of Electronic Filing will be automatically transmitted to:

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